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under lasting obligations. Only a person who has labored over newspaper files and local records can appreciate the amount of work which the book entailed. But no one can fail to profit by the clear and instructive presentation of the facts elicited from all such sources, and to a large circle of readers "The Confederate States of America" will possess a permanent interest and value.

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The Constitutional History of the United States. By FRANCIS NEWTON THORPE. 3 vols, 1765-1895. Chicago: Callaghan & Co., 1901.

There have been several histories of the Constitution of the United States. Professor Thorpe is the first to make a serious attempt to write the constitutional history of the United States. The United States were not produced by their Constitution. They had already had a full and busy existence for a dozen years, and if we follow President Lincoln in his characterization of the Continental Congress of 1774, for fourteen. The component states had also had each its separate life and history,—separate and yet not wholly so. Their peoples had come to share the name of Americans, and many among them had long felt a certain sentiment of nationality.

In surveying the field before him, at the outset, Prof. Thorpe thought it too large to be covered by a single work. He, therefore, set himself first to the task of preparing what he styled a "Constitutional History of the American People." This he published in 1895, bringing it down to 1850; and now have come three volumes more, directed more particularly to the national features of our political system.

Something has been gained and something lost by this division of a subject which is really one. To those who read both works, it puts in bolder relief the aspect of the state as the forerunner and, in some respects, the prototype of the United States, and directs attention first, in a broad way, to the especially social, economic and psychological forces which lie at the foundation of our history. But to the greater number who will read but one, the author's plan of division makes his treatment of his theme seem incomplete; and frequent repetition in the later history is only avoided by as frequent references to the preceding one. In an age which knows so well the economy of combination, it seems a solecism to write two books when both might fairly be comprehended in one.

Mr. Thorpe prefaces his first volume with the observation of Professor Dicey that the historian of our Constitution is primarily occupied with ascertaining the steps by which it has grown to be what it is, whereas an American jurist, in lecturing upon it, would necessarily start from the written document itself. Such a remark from a foreigner is not unpardonable, but we confess our surprise at its endorsement in the work under review. In the earliest lectures on the Constitution of the United States by an American jurist, those published by Mr. Justice Story as his "Commentaries on the Constitution," half of the first volume is taken up with a review not dissimilar to that undertaken by Prof. Thorpe, of its historical sources and environment; and the same thing is true of the latest work on the Constitution, that of J.

Randolph Tucker, which also presents what was originally a set of lectures given in an American law school.

No previous writer on the subject, however, has explored his preliminary field in all its corners as fully as Prof. Thorpe.

He is also often very happy in his generalizations. His application of the doctrine that the frontier is always democratic is an instance of this. "The American colonies," he observes (I, 23) "were the English frontier, and their voice was against prerogative and for the supremacy of the general assembly." Great weight is justly given (I, 22, 48) to the conservative influence of the system of county government, under which matters of local administration have always been regulated in the South. It kept power and patronage in the hands of county families, and tended strongly to the maintenance of aristocratic conditions.

Occasionally a statement occurs which might have been better guarded. Thus, in contrasting the provinces under royal governors with the two strictly republican colonies, it is said (I, 18) that in the latter the rights both of property and government belonged to the people, and that "by the people is to be understood that portion of the population who were of age, who were free men and land owners, and who subscribed to such religious qualifications as the laws required." The rights of property, however, if by that the author means anything but the ultimate title of the sovereign, belonged of course in every colony to the several owners of the property, whoever they might be, inhabitants or foreigners, grown men or babes in arms. If, on the other hand, reference was intended to the rights incident to sovereignty, these belonged to the colony, or its whole people collectively; men, women, and children, freeholders or landless alike.

It has been considered an axiom of American politics that the Senate was constituted to represent the states, and to represent them on a footing of equality. Prof. Thorpe, without laying any very firm foundation for the observation, remarks that there were those in the Convention which framed the Constitution who thought (I, 409) that "as the Senate was intended to represent the wealth of the country, it ought to be composed of rich men." It may well be doubted if two men in the Convention entertained such a sentiment.

The best part of the work under review is that which describes the growth of the Constitution since 1789.

A valuable table is given in Vol. II (p. 201) of the American precedents for the earlier amendments. The first Congress of the United States under that instrument was really also a constitutional convention, and Prof. Thorpe presents a readable and well-ordered statement of the debates on this new bill of rights.

Slavery, with its hydra head, its fall, and the thousand questions arising out of its fall, necessarily makes the subject of a large part of the second and third volumes. They touch on less familiar ground, and give an opportunity for generalizations on fresh themes which have been effectively improved.

The author is least happy when he discusses bare legal propositions or

traces out their consequences. Thus he observes (I, 24) that "had America been formally bound by the common law, it would never have been independent, for by the common law independence was treason." In most things the common law of England was generally recognized throughout the colonies as of controlling obligation, although by some of their political leaders (Roger Sherman, for instance) it was treated as such because we had freely adopted it for ourselves, not because it was the law of England but because it was right. Allegiance was defined by it. The consequences of violating one's allegiance were defined by it. Our fathers knew well that to maintain our political independence was treason, unless successful; but they knew also that "rebellion to tyrants is obedience to God."

Prof. Thorpe divides his first volume pretty equally between a preliminary discussion of the beginnings of the United States and an account of the doings of the Convention of 1787. Volume II opens with the consideration of the reception by the states of the new Constitution and of the amendments which public sentiment immediately called for; concluding with an examination of the long struggle for state sovereignty in its fullest meaning, which culminated in the secession of the South. Volume III discusses at length the immediate consequences of that movement, with respect to the negro, and the three amendments to the Constitution designed to reconstruct the Southern states, and which have almost reconstructed the United States. Here, as the time-limit of the author's "Constitutional History of the American People" is passed, there is a certain reversion to the scheme of that work, and great space is given to the course of popular opinion and the legislative action in the several states. The book then concludes with a backward glance, in the nature of a review, at the Constitution as a whole, and a brief mention of some of the later utterances of the Supreme Court of the United States on national questions.

One is struck now and then by an inaccuracy of expression, indicating a reliance on the recollection of the author, when it would have been safer to consult the original authority. Thus, it is stated (I, 57) that the assertion by the New York Congress of 1765 "that the attempt of Parliament to tax the colonies would be 'unconstitutional' was perhaps the earliest use of the word in its modern sense by an American assembly." In fact, the assertion was that no taxes could be "constitutionally imposed upon" the colonies but by their own legislatures. The author also refers (I, 56) to the Declaration by this Congress as "the earliest formal presentation of the epoch-making doctrine of the natural rights of man." It is somewhat difficult to discover the doctrine in that paper. Its argument from beginning to end is that the colonists are Englishmen, and free because and as Englishmen are free. If the phrase relied on is the third article, "That it is inseparably essential to the freedom of a people and the undoubted right of Englishmen that no taxes be imposed on them but with their own consent," etc., it is enough to say that this is rather in the nature of a corollary from the second article, in which the colonists are described as entitled to the inherent rights and liberties of their fellow-subjects born on English soil.

Few historical studies are more irksome and disheartening than those

which must be prosecuted by searches in the Journals of the Continental Congress. This is due to the division of the records into two sets, the open and the secret, and to the wretched indexes, too helpful to be wholly neglected and too defective to be ever relied on. The author has undertaken to extract from these Journals a statement of the authorized emissions of continental bills (I, 125), and with results different from those heretofore accepted. An examination of the Journals themselves shows that he has overlooked several important issues, as, for instance, that of July 25, 1775, $1,000,000 (I Journ. of Congr., 165), and that of February 17, 1776, $4,000,000 (II Journ., 65). In the next following table of colonial emissions, a comparison with other authorities, such as Bronson's *Historical Account of Connecticut Currency, Continental Money and the Finances of the Revolution,* also shows very material errors.

But it is almost ungracious to comment on such minor defects when there is so much to commend in the work as a whole. Few authors are at once precise in detail and broad in comprehension. The real power in any history lies in its manner of grouping and arranging facts so as to show their true relation to each other, and to bring out that order in the sequence of events which always exists, but may lie too deep to be seen by the ordinary eye. *Felix qui potuit rerum cognoscere causas.* Professor Thorpe's previous work has shown that he possesses not a little of this faculty, and the book under review is a still stronger proof of it. No one, for instance, has before brought out into as strong relief one great lesson of the Civil War,—"its demonstration that sovereignty abides with the constituency, and not with the agent; that it exists with the people of a state, and not in a state as a political corporation" (III, 522).

Mr. Thorpe's history, as a whole, is one of substantial and permanent value, and the material that he has brought together will be a mine of information to all future writers on American politics in the nineteenth century.

The last stage in the development of the Constitution which the limits assigned to his task allowed him to touch upon is that culminating in the income tax decision. Its growth has since been making rapid progress. He was probably wise in assuming that, without the perspective of time, an American would find it difficult, either as writer or reader, to pass a fair judgment on the events of the last four years. With the aid of the perspective of distance, Professor Hauser, of the University of Dijon, in commenting on *"L'Essor économique des Etats-Unis au XIX^e^ siècle,"*[40] has recently said this: *"Avec l'année 1898 commence en réalité une periode nouvelle: les victories sur l'Espagne, le triomphe de la politique d'expansion, le triomphe de la monnaie d'or temoignent de ce changement."*

This new period, political as well as economic, will not simply have a history of its own. It will bring into strong light forces that have been working underground since the Civil War, and lend new emphasis to some of the positions advanced by Professor Thorpe in his third volume.

New Haven, Conn. SIMEON E. BALDWIN.

[40] *Bulletin de la Société des Amis de l'Université de Dijon, Tom* 6, *No* 5, *Fev.* 1902.